

COMMUNITY BENEFITS AGREEMENT
BETWEEN THE CITY OF KANSAS CITY, MISSOURI AND
TRILIUM INDUSTRIAL NO. 1, LLC

This Community Benefits Agreement (this “**Agreement**”) is entered into this ___ day of _____, 2019 (the “**Effective Date**”) between the City of Kansas City, Missouri (the “**City**”), a duly organized and existing Missouri constitutional charter municipality, and Trillium Industrial No. 1, LLC, a limited liability company organized and existing under the laws of the State of Illinois and duly registered and authorized to transact business in the State of Missouri (“**Developer**”), for certain community benefits to be provided by Developer related to the redevelopment of the existing KC Holiday Inn generally situated at the southeast corner of Main Street and East 45th Street and bounded on the east by Walnut Street in Kansas City, Missouri (the “**Property**”) into a new Kimpton brand hotel (the “**Project**”). This Agreement outlines the terms and conditions pursuant to which Developer agrees to provide certain community benefits in connection with its development of the Project, as defined below.

RECITALS

A. Developer has proposed the redevelopment of the existing KC Holiday Inn on the Property which currently consists of a five-story hotel tower on the southeast side of the Property, a two-story hotel wing on the east side of the Property, a two-story wing on the north side of the Property, and a hotel lobby, meeting room space and a parking structure on the west side of the Property.

B. Developer proposes the redevelopment of this existing KC Holiday Inn into a new Kimpton brand hotel that includes the complete renovation of all of the existing rooms in the five-story hotel tower and the east two-story hotel wing, the replacement of the northern two-story hotel wing with a new five-story hotel tower, the complete renovation of the hotel lobby, meeting rooms, public space and kitchen and back-of-the house areas, and the refurbishing of the parking structure and other parking areas (the “**Project**”).

C. To make its Project financially feasible, Developer requested the following forms of public assistance from the City: (i) the redirection of up to Twenty-Five Million Nine Hundred Forty-Three Thousand Dollars (\$25,943,000) of certain future sales tax revenues generated within the Project boundaries for the Developer’s use in reimbursing itself for Project related costs, and (ii) the issuance of Chapter 100 bonds to secure a sales tax exemption on materials for the Project.

D. In consideration of the public assistance to be provided by the City, Developer is willing to agree to make certain improvements that will enhance the nearby community and provide certain financial assistance that will benefit the City.

E. The City Council authorized a Sales Tax Contribution Agreement for the Project with its passage of Ordinance No. 190 ____, which authorized the redirection and contribution of up to a total amount of \$25,943,000.00 from the following sources: (i) fifty percent (50%) of the total retail sales taxes generated from the City’s 1.00% capital improvements sales tax pursuant to Section 68-446 of the City’s Code of Ordinances from sales occurring within the boundaries of the Property, (ii) twenty-five percent (25%) of that portion of the retail sales taxes generated from the City’s 7.50% convention and tourism sales tax imposed on sales or charges for hotel rooms

pursuant to Section 68-551 of the City’s Code of Ordinances from sales occurring within the boundaries of the Property and not otherwise allocated pursuant to Section 92.336(1) and (2), RSMo or Section 68-551 of the City’s Code of Ordinances,, and (iii) fifty percent (50%) of the total retail sales taxes generated from the City’s 2.00% convention and tourism sales tax imposed on the retail sales of food and beverages pursuant to Section 68-551 of the City’s Code of Ordinances from sales occurring within the boundaries of the Property.

F. The City Council authorized the issuance of Chapter 100 taxable industrial revenue bonds to secure a sales tax exemption on material used on this Project

NOW, THEREFORE, for and in consideration of the foregoing material recitals, and the mutual promises contained herein, the City and Developer do hereby agree as follows:

I. Community Benefits To Be Provided by Developer

Developer agrees to provide the following to benefit the City and the community situated within the general vicinity of the Project:

A. Elimination of ingress and/or egress onto Main Street

Developer agrees that, in the design and in the construction or reconstruction of the Project, all existing driveway cuts, garage entrances or exits or other points of ingress and/or egress for motor vehicles directly onto Main Street will be eliminated and no new driveway cuts, garage entrances or exits or other points of ingress and/or egress for motor vehicles directly onto Main Street will be included in the architectural plans or construction specifications used for the Project and no new driveway cuts, garage entrances or exits or other points of ingress and/or egress for motor vehicles directly onto Main Street will be constructed.

B. Streetscape enhancements

Developer agrees to enhance the streetscape to create a “gateway” from the northern and northeastern boundaries of the Project to the Kemper Contemporary Art Museum, the Kansas City Art Institute and the Southmoreland neighborhood by:

1. Reconstructing the City sidewalk along the Property’s Main Street frontage in conformance with the Main Street Corridor Streetscape Master Plan;
2. Landscaping including newly planted trees, shrubs, perennials and groundcover on the Property adjacent to Main Street, East 45th Street and Walnut Street; and
3. Participating in the development of an “Arts Walk” from the 45th Street frontage of the Project through, or abutting, the campuses or sites of the Kemper Contemporary Art Museum, the Kansas City Art Institute and the Nelson-Atkins Museum; including the Developer’s funding of a minimum of \$50,000.00 of “visual enhancements” along this “Arts Walk”:
 - a. Cooperating with representatives of the Kemper Contemporary Art Museum, the Kansas City Art Institute, the Nelson-Atkins

Museum and the Southmoreland Neighborhood Association in the design of the “Arts Walk” and the selection of the artist(s) and artwork(s) to be installed or displayed along the “Arts Walk”; and

- b. Recognizing and agreeing that in selecting artists and artwork for the “Arts Walk”, preference is to be given to Kansas City regional artists.
4. Providing the City estimated budgets for any streetscape enhancements along Main Street, 45th Street and Walnut Street and the “Arts Walk”, as described above in subsections 1 and 2 and that those estimated budgets be included as obligations under this Agreement by subsequent amendments to the Agreement.
5. Agreeing that if any portion of the “Arts Walk” or any artwork of the “Arts Walk” is to be situated on City-owned real property or City-owned right-of-way, the Developer will present its concepts to the City’s Municipal Art Commission prior to initiating any artist or artwork selection process and to provide the City, through its Municipal Arts Commission, the opportunity for comments. The Developer further acknowledges and agrees that any sculptures, artwork or other “Arts Walk” features that would be situated on City-owned land or right-of-way will require final approval from the City’s Municipal Art Commission.

C. Outdoor Sculptures

Developer agrees to commission and then purchase two (2) outdoor public sculptures of no less than 25 feet in height, to install each of them along the 45th Street frontage of the Project to the east of Main Street with the artist and the artwork to be selected by a majority vote of a committee consisting of one representative each from Developer, the Kemper Museum of Contemporary Art, the Kansas City Art Institute, the Nelson-Atkins Museum and the Southmoreland Neighborhood Association, with at least one of the public sculptures visible from Main Street and both visible from 45th Street.

1. Developer further agrees it will attempt to commission and then purchase two (2) outdoor sculptures from one or two nationally or locally known sculptors chosen by a majority vote of a selection committee consisting of one representative from each of the following: Developer, the Southmoreland Neighborhood Association, the Kemper Museum of Contemporary Art, the Kansas City Art Institute and the Nelson-Atkins Museum.
2. Developer further agrees that the cost of the two (2) outdoor public sculptures, including the costs of shipping and installation, shall not be less than \$600,000.00, nor more than \$800,000.00.
3. Developer further agrees to obtain any licenses or easements necessary for the installation of the two (2) outdoor sculptures on the selected locations at its expense.

4. Developer further agrees to transfer ownership of the two (2) sculptures to the City after their purchase and installation. Thereafter, City agrees to maintain said sculptures throughout the Term of this Agreement as specified below in Section II.

D. Economic Development and Housing

The City's support of economic development is premised, in part, on the firm belief that economic development generates new opportunities for businesses to give back to the local communities that have enabled them to succeed. Developer, as petitioner for the creation of the CIDs, shares the City's commitment to bettering the local community and has elected, though not required by law, to help the City realize its goals by making certain financial commitments to remediate housing code violations. City, in turn, has been induced by the promises and obligations to be undertaken by Developer in considering whether the establishment of the CIDs are advisable. Developer understands that the provisions of this Article are material to the City.

Upon the effective date of the establishment of the Districts described in Ordinance No. 190492 and Ordinance No. 190493, Developer hereby obligates itself to:

Contribute the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) to the City's Municipal Court Fund Program administered by the City's Neighborhoods and Housing Services Department. City and Developer estimate that such a contribution will allow the City to help repair up to forty (40) homes with housing code violations. Such funding shall be made available to senior citizens otherwise determined to be eligible by the City pursuant to its program requirements, and shall occur on the following schedule:

1. Fifty Thousand Dollars (\$50,000.00) to be paid to the City no later than one (1) year after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.
2. Twenty Five Thousand Dollars (\$25,000.00) to be paid to the City no later two (2) years after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.
3. Twenty Five Thousand Dollars (\$25,000.00) to be paid to the City no later three (3) years after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.
4. Twenty Five Thousand Dollars (\$25,000.00) to be paid to the City no later than four (4) years after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.
5. Twenty Five Thousand Dollars (\$25,000.00) to be paid to the City no later than five (5) years after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.
6. Twenty Five Thousand Dollars (\$25,000.00) to be paid to the City no later than six (6) years after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.

7. Twenty Five Thousand Dollars (\$25,000.00) to be paid to the City no later than seven (7) years after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.

8. Twenty Five Thousand Dollars (\$25,000.00) to be paid to the City no later than eight (8) years after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.

9. Twenty Five Thousand Dollars (\$25,000.00) to be paid to the City no later than nine (9) years after the effective date of the establishment of the Districts described in Ordinance No. 194092 and Ordinance No. 190493.

II. **Term**

This Agreement shall commence on the Effective Date, and shall expire upon Final Completion of the Project, unless otherwise provided herein (the “**Term**”).

III. **Indemnification**

Developer shall indemnify, hold harmless and defend City, its affiliates, officers, trustees, elected or appointed officials, agents, volunteers and employees, from and against any and all claims, liability (including judgments and settlements), damages and expenses (including reasonable attorneys’ fees) involving a third party claim, arising out of or resulting from: all acts or omissions in connection with this Agreement, or any program described herein, but only to the extent caused by Developer or Developer’s agents, contractors, officers, affiliates, subcontractors, and employees. Developer is not obligated under this section to indemnify City for the sole negligence of the City or a breach of any of the representations, covenants, provisions, terms, obligations or duties contained in this Agreement.

IV. **Default and Remedies**

If the City determines that Developer has violated any of the material terms and conditions of this Agreement or that Developer failed to properly perform its obligations under the Agreement, then the City shall provide written notice of such alleged default to Developer pursuant to Section V (E) below. If after thirty (30) business days after receipt of such notice Developer has not cured or made good faith efforts to begin curing such alleged default upon receipt of such notice, then the City shall have the right to pursue any remedies available at law or in equity. The parties further agree that any breach or evasion of any of the terms of this Agreement by Developer will result in immediate and irreparable injury to the City, and as a result, the City may seek an injunction and/or specific performance in the event of any such breach.

V. **Miscellaneous**

A. **Applicable Law.** The laws of the State of Missouri shall govern the validity, construction and effect of this Agreement. All disputes arising under or relating to this Agreement shall be filed, maintained and resolved in accordance with the laws of the State of Missouri without regard to its conflict of law rules.

B. **Assignment.** Neither party to this Agreement shall be permitted to assign or transfer its rights under this Agreement without the prior written consent of the other party, except that Developer may assign or transfer its interest and obligations under this Agreement to an affiliate or subsidiary entity of Developer or as otherwise permitted by the Development Agreement.

C. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest.

D. **Amendments.** This Agreement may not be varied, amended, modified or supplemented and any obligation, right power or remedy shall not be waived except in an agreement in writing signed by the duly authorized representatives of the parties hereto.

E. **Notices.** A notice or communication required by, or sent pursuant to, this Agreement by either Party to the other shall be sufficiently given or delivered if dispatched by hand, national courier services, or by registered or certified mail, postage prepaid, addressed as follows:

If to City:

City Manager's Office
Attn: City Manager
City Hall, 29th Floor
414 East 12th Street
Kansas City, MO 64106

with a copy to:

City Attorney's Office
Att'n: City Attorney
City Hall, 23rd Floor
414 E 12th Street.
Kansas City, MO 64106

If to Developer:

Trillium Industrial No. 1, LLC
c/o Janko Group, LLC
Attn: Gary Janko
2610 Lake Cook Road, Suite 100
Riverwoods, IL 60015

with a copy to:

Dentons US LLP
Attn: David Fenley
4520 Main Street, Suite 1100
Kansas City, MO 64111-7700

F. **Compliance with Laws.** Developer shall comply with all federal, state and local laws, ordinances and regulations applicable to this Agreement and performance of its obligations under this Agreement. Developer shall secure all occupational and professional licenses and permits from public or private sources necessary for performance under this Agreement.

G. **Headings; Construction of Agreement.** The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

H. **Severability of Provisions.** Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

I. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Community Benefits Agreement to be executed as of the Effective Date.

DEVELOPER:

Trillium Industrial No. 1, LLC

By: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2019 before me, a Notary Public in and for said state, personally appeared _____, of Trillium Industrial No. 1, LLC, personally known by me to be the person who executed the within instrument in behalf of said entity and acknowledged to me that they executed the same for the purposes therein stated.

Notary Public

My Commission Expires:

CITY:

CITY OF KANSAS CITY, MISSOURI

By: _____

Name: Troy M. Schulte

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name: Galen P. Beaufort

Title: Senior Associate City Attorney